



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

08 1 1 1 5

Mr. H. Edward Kelley III c/o Kelley Poultry LLC  
3267 Kelley Road  
New Church, VA 23415

Re: Information Requirement Pursuant to Section 308 of the Clean Water Act

Dear Mr. Kelley:

Enclosed is an Information Requirement issued to you as the owners of the property located at 3371 Kelley Road, New Church, VA 23415. The United States Environmental Protection Agency ("EPA") is authorized under Section 308 of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1318, to require reports and other information necessary to carry out the purposes of the Act. You should read the Information Requirement carefully as it provides instructions and deadlines for certain information to be provided to EPA.

Compliance with this Information Requirement is mandatory. Failure to respond fully and truthfully to the Information Requirement in accordance with deadlines set forth in the Information Requirement, or to adequately justify such failure to respond, can result in enforcement action by EPA pursuant to Section 309 of the Act, 33 U.S.C. § 1319. EPA is authorized to seek the imposition of penalties up to \$37,500 for each day of continued noncompliance with the Information Requirement. Please be further advised that the provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

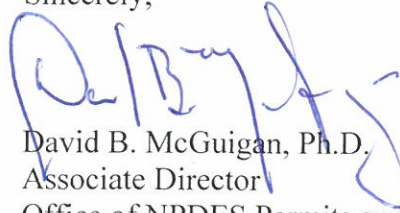
You may assert a business confidentiality claim covering all or part of the information required herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information required herein when it is received, EPA may make the information available to the public without further notice to you.

This Information Requirement is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35 (See 5 C.F.R. § 1320.3(c)).



Should you have any questions pertaining to this matter, please contact Mark Zolandz at (215) 814-2319, or have your counsel contact Andrew Duchovnay, Senior Assistant Regional Counsel, at (215) 814-2484.

Sincerely,



David B. McGuigan, Ph.D.  
Associate Director  
Office of NPDES Permits and Enforcement  
Water Protection Division

cc: Neil Zahradka, VADEQ  
Betsy Bowles, VADEQ  
Roger Everton, VADEQ  
Kathleen O'Connell, VADEQ

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In The Matter of:	:	<u>INFORMATION REQUIREMENT</u>
	:	
Mr. H. Edward Kelley III and	:	Proceeding Under Section 308 of the
Kelley Poultry LLC	:	Clean Water Act, 33 U.S.C. § 1318
3371 Kelley Road	:	
New Church, VA 23415	:	
	:	
	:	
Respondents	:	
	:	

**I. STATUTORY AUTHORITY**

1. This Information Requirement is issued under the authority vested in the United States Environmental Protection Agency (EPA) by Section 308 of the Clean Water Act (CWA or Act), 33 U.S.C. § 1318. The Administrator of the EPA has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division of EPA Region III who in turn has delegated it to the Associate Director of the Office of National Pollutant Discharge Elimination System (NPDES) Permits and Enforcement. EPA hereby requires Respondents to provide information specified below.

**II. STATUTORY AND REGULATORY BACKGROUND**

2. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the CWA, including but not limited to:
  - a. developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;
  - b. determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
  - c. any requirement under Section 308 of the CWA; and,



- d. carrying out Sections 305, 311, 404, and 504 of the CWA.
- 3. Failure to respond as directed to a CWA Section 308 requirement is punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment. Providing misleading or false information may subject you to civil and criminal sanctions. The information you provide may be used by EPA in administrative, civil, or criminal proceedings.
- 4. You may, if you desire, assert a business confidentiality claim covering all or part of the information required herein in the manner described in 40 C.F.R. Part 2, Subsection B. Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information required herein when it is received by EPA, it may be made available to the public by EPA without further notice. You may not withhold any information from EPA on the grounds that it is confidential business information. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. Chapter 35. *See* C.F.R. Section 1320.3(c).

### **III. INSTRUCTIONS**

- 5. Provide all documents in your possession which relate to the responses given. With respect to each document, identify the date, author, addressee, current location, and custodian and indicate on each document produced in response to this Information Requirement, or in some other reasonable manner, the number of the question or subpart to which it corresponds.
- 6. Provide a separate narrative response for each question contained in this Information Requirement and for each subpart of each question. Precede each answer with the corresponding number of the question to which it responds.
- 7. Provide the name, address, telephone number, and occupation of each person providing responses to any questions contained in this Information Requirement, as well as each person consulted in the preparation of the response on behalf of Respondents to these demands for information.
- 8. For each question, identify each document consulted, examined, or referred to in the preparation of the response or that contains information responsive to the questions, and provide a true and correct copy of each document if not provided in response to another specific question.
- 9. If tabulation is required, provide the required information in tabular form in hard copy and also in tabular form in an electronic spreadsheet file of Microsoft Excel format.
- 10. To the extent information required herein was previously provided to EPA by the Respondents, there is no need to provide it again, but rather identify the information and the date it was previously provided.
- 11. If required information or documents are not known or are not available at the time of your

response to this Information Requirement, but later become known or available, Respondents must supplement its response to EPA. Moreover, should Respondents find at any time after submission of its response that any portion is or becomes false, incomplete, or misrepresents the facts; Respondents must provide EPA with a corrected response as soon as possible.

12. All submissions provided pursuant to this Information Requirement shall be signed and dated by Respondents to include the following certification:

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

13. Submit a copy of your response to the following individual:

Mark Zolandz  
NPDES Enforcement Branch (3WP42)  
Water Protection Division  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

14. If you have questions regarding this Information Requirement, you may contact Andrew Duchovnay, of the Office of Regional Counsel at (215) 814-2484 or Mark Zolandz at (215) 814-2319.

#### **IV. DEFINITIONS**

15. All terms not identified herein shall have their ordinary meaning, unless such terms are defined in the CWA, 33 U.S.C. § 1326, or its implementing regulations found at 40 C.F.R. Parts 122 and 412, in which case the statutory or regulatory definition shall apply.
16. The terms "document" and "documents" shall mean any format that records, stores or presents information and includes writings, memoranda, records or information on any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hard copy, including any form or format of these types. If in computer format or memory, each such document shall be provided in a translated form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy should also include: (a) a copy of each document which is not an exact duplicate of a document which is provided; (b) each copy which has any writing, notation, or the like on it; (c)



drafts; (d) attachments to or enclosures with any document; and (e) every other document referred to or incorporated into each document.

17. The term "owner or operator" means any person who owns, leases, operates, controls, or supervises the operation of a point source.
18. The term "identify" with respect to a natural person means to provide that person's name, address, telephone number, title, and relationship to Respondents. The term "identify" with respect to a business entity means to provide that entity's name, address and relationship to Respondents, and to provide the name, address, telephone number, and title of an individual who can provide information related to, and on behalf of the entity.
19. The term "Animal Feeding Operation" or "AFO" is a lot or facility where (a) animals have been, are, or will be stabled or confined and fed or maintained for 45 days or more in any twelve-month period and (b) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more AFOs under common ownership are considered to be a single AFO for purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.
20. The term "manure" includes manure and other materials commingling with manure (include but not limited to bedding, compost, and raw materials) and set aside for disposal.
21. The term "nutrient management plan" means any nutrient management plan, comprehensive nutrient management plan, animal waste management plan, manure management plan, conservation plan, or any other farm specific document that addresses the requirements set forth in 40 C.F.R. §122.42(e)(1).
22. The term "source" means any building, structure, facility, or installation on which pollutants are located.
23. The term "point source" means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
24. The term "discharge" refers to the introduction of pollutants into designated Waters of the United States from any non-domestic source regulated under Section 402 of the Clean Water Act.

#### **V. INFORMATION REQUIREMENT**

AND NOW, this 10<sup>th</sup> day of August, 2015, Respondents are hereby directed, pursuant to Section 308 of the Act, 33 U.S.C. § 1318, to provide the following information:

25. Identify any changes made to the poultry grow-out operations located at 3371 Kelley Road, New Church, VA 23415 (Accomack County Parcel Identification Number 01200A0000020D0) since the EPA inspection on September 6, 2013 that were implemented to reduce or eliminate the

potential for discharges of manure, litter, or process wastewater to nearby water bodies. Changes include the implementation of physical best management practices, such as vegetated filter strips, as well as modified operational procedures, such as changes in litter handling and clean-up activities during or after live-haul activities or litter removal activities.

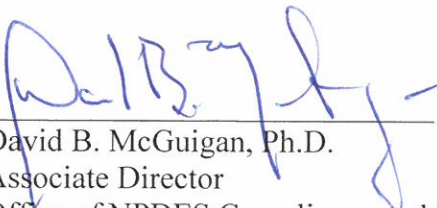
26. Identify any and all AFOs owned by Respondents where birds have been, are currently, or will be housed (including operations proposed or under construction). Provide the following information for each AFO identified:
  - a. Farm name(s);
  - b. Farm address;
  - c. Latitude and longitude at entrance (if readily available);
  - d. Farm operator(s) name(s);
  - e. Type of poultry;
  - f. Number of poultry houses;
  - g. Total bird capacity (for each house separately and for entire farm collectively)
  - h. Number of litter sheds;
  - i. Total capacity of litter shed(s) in tons.
27. Provide copies of any and all Virginia Pollution Abatement (“VPA”) or Virginia Pollutant Discharge Elimination System (“VPDES”) permit applications or Notices of Intent that were submitted to the Virginia Department of Environmental Quality (“VADEQ”) for any of Respondents’ AFOs identified above.
28. Provide copies of the current Nutrient Management Plans for all of Respondents’ AFOs identified above and any and all previous nutrient management plans dated September 1, 2013 or later.
29. Provide copies of any and all correspondence with and notices of violation, orders, penalty assessments, or other enforcement actions issued by the Commonwealth of Virginia since September 1, 2013. If notices of violations, orders, penalty assessments, or other enforcement actions have been issued, provide a description of the origin of the noncompliance, efforts taken to resolve the noncompliance, resolution of the noncompliance, including any penalties imposed or paid, and include all related correspondence with VADEQ, or any other related documents, including evidence of payment of assessed penalties, if any.

## **VI. EFFECTIVE DATE**

This INFORMATION REQUIREMENT is effective upon receipt. Information responsive to this Information Requirement shall be submitted to EPA within thirty (30) calendar days upon receipt of this Information Requirement.

Date:

8/10/15



David B. McGuigan, Ph.D.  
Associate Director  
Office of NPDES Compliance and Enforcement  
Water Protection Division